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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,324	03/12/2004	Rory Hogan	HOGAN-0003	8808

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ROBERT PLATT BELL
REGISTERED PATENT ATTORNEY
P.O. BOX 13165
JEKYLL ISLAND, GA 31527

EXAMINER	
GROSSO, HARRY A	

ART UNIT	PAPER NUMBER
3781	

MAIL DATE	DELIVERY MODE
05/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/798,324	HOGAN ET AL.	
	Examiner	Art Unit	
	Harry A. Grosso	3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-5,7,10 and 12-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-5,7,10 and 12-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 April 2004 and 27 February 2007* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/27/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

The substitute specification filed February 22, 2007 has not been entered because it does not conform to 37 CFR 1.125(b) and (c) because: it does not conform to 37 CFR 1.125(b) in that there is no statement with the filing that the substitute specification contains no new matter. The substitute specification does, in fact, appear to contain new matter in paragraphs 0039, 0050 and 0051.

Drawings

The amendment filed February 27, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: new Figure 21 discloses a specific location and configuration for a handle partially integral with the material of the beverage holder. This location and configuration is not supported by the original disclosure wherein the handle was disclosed as contiguous with the beverage holder material but the location was not specified.

Applicant is required to cancel the new matter in the reply to this Office Action. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the portion of flexible material, contiguous with at least one of the first rectangular portion and the second rectangular portion, folded over (claims 5 and 14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

The double patenting rejection has been overcome by the amendment filed February 27, 2007. The rejection is withdrawn

Claim Rejections - 35 USC § 103

1. Claims 1, 3, 4, 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson (4,540,611) in view of Mahoney, Jr. et al (6,029,847) (Mahoney), Wicker (6,206,223), and Kinney, Jr. (2,617,676).

2. Regarding claims 1, 3, 10 and 12, Henderson discloses a flexible beverage holder made from a single sheet of flexible material with first and second rectangular portions and a round portion with the means of attaching the rectangular portions is stitching (figures 1-10, column 2, lines 21-39).

Henderson does not teach the use of a strap on the holder. Mahoney discloses a flexible beverage holder with a strap stitched onto the side of the holder (38, Figure 1, column 2, lines 65-67) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of strap stitched to the side of the holder as disclosed by Mahoney in the beverage holder disclosed by Henderson to provide a handle for more securely gripping the holder.

Henderson and Mahoney do not teach the strap is made from the flexible material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the same material for the strap as used in the holder to reduce manufacturing and inventory costs and simplify to manufacturing process.

Henderson and Mahoney do not teach the width of the strap being 2.5 to 4 inches. It would have been an obvious matter of design choice to make the strap width in the range of 2.5-4 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Henderson as modified by Mahoney discloses the invention made of a foam insulative material but does not teach the flexible material being foamed polyurethane or

neoprene. Wicker discloses a beverage can holder made from foamed polyurethane column 4, lines 26-31). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of foamed polyurethane as disclosed by Wicker in the beverage holder disclosed by Henderson and Mahoney since it is known in the art to use this material for insulated beverage holders.

Henderson, Mahoney and Wicker do not teach the strap is provided with an advertisement logo. Kinney, Jr. discloses a beverage holder with a strap for a handle and further discloses the use of advertising indicia on the handle (Figures 1-4, column 1, lines 21-25) It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an advertisement logo on the strap disclosed by Kinney, Jr. in the beverage holder disclosed by Henderson, Mahoney and Wicker to provide identification for the holder through the use of a logo.

3. Regarding claims 4 and 13, Mahoney discloses the strap attached to a side panel of the holder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have attached the strap to one of the rectangular panels to prevent the strap from interfering with the folding of the holder when not in use.

4. Claims 5, 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson as modified by Mahoney, Wicker and Kinney, Jr. in view of Evans et al (4,802,602).

5. Regarding claims 5 and 14, Henderson as modified by Mahoney, Wicker and Kinney, Jr. disclosed the invention except for the portion of flexible material, contiguous with at least one of the first rectangular portion and the second rectangular portion,

folded over to form the strap. Evans et al disclosed a flexible beverage holder in which a portion of the flexible material contiguous with a side of the holder is folded over to form a strap. (22, Figures 1-3 and 8, column 4, lines 40—43 and lines 61-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a portion of the flexible material contiguous with a side of the holder folded over to form a strap as disclosed by Evans et al in the beverage holder disclosed by Henderson as modified by Mahoney, Wicker and Kinney, Jr. to provide a strap to be used as a handle without requiring the operations necessary to produce a separate strap portion and attach it. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the same stitching methods used to attach the rectangular portions together in attaching the end of the strap to the holder thus not requiring additional attachment methods and materials.

6. Regarding claim 7, Henderson as modified by Mahoney, Wicker, Kinney, Jr. and Evans et al discloses the claimed invention except for the width of the strap being 2.5 to 4 inches. It would have been an obvious matter of design choice to make the strap width in the range of 2.5-4 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Response to Arguments

7. Applicant's arguments filed February 27, 2007 have been fully considered but they are not persuasive.

8. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant argues that the beverage holders of Mahoney and Henderson are constructed differently and made of different materials so there would be no motivation to combine them. Mahoney is used as a teaching for using a handle on a beverage holder. Both are beverage holders and one of ordinary skill in the art would have the knowledge of a handle used on a beverage holder.

9. Applicant argues that Henderson discloses and claims a vinyl layer on his apparatus that is not taught by the present invention. In response, the vinyl layer of Henderson's beverage holder is not relevant to the structure claimed in the instant application which is disclosed by Henderson.

10. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Henderson teaches a foldable beverage holder with two rectangular portions that are sewn together and Mahoney teaches the use of a handle on the side panel of a beverage holder. It would be obvious to one of ordinary skill in the art that a handle attached to the beverage holder of Henderson would have to be attached to one of the rectangular portions to avoid interfering with the folding of the holder.

11. Applicant argues that the strap of the instant invention is made to the width of 2.5 inches to 4 inches for a specific purpose and the prior art cited does not disclose this strap width. In response, making the strap width 2.5 inches to 4 inches would involve a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

12. Applicant argues that Wicker discloses a beverage holder that is not foldable, is of a different construction and does not teach the all of the elements of the instant invention. In response, Wicker is a beverage holder and is used to teach the use of foamed polyurethane in beverage holders. It is not depended upon to teach the construction or any of the structure of the beverage holder.

13. Applicant argues that Evans discloses a fabric beverage holder and is not applicable to the instant invention. In response, Evans is used to teach the concept of a flexible beverage holder in which a portion of the flexible material contiguous with a side of the holder is folded over to form a strap. It is not depended upon to teach other structural elements of the beverage holder or the material of the beverage holder.

14. Applicant's arguments with respect to claims 8 and 17 have been considered but are moot in view of the amendment filed February 27, 2007.

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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